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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Mark Gunn Lloyd,

Plaintiff,

v.

Joseph Arpaio, Detention Officer
Barron, Detention Officer Plague,
Nurse Jackie,

Defendants.

CV 07-2638-PHX-PGR (MEA)

ORDER

Pending before the Court is the Report and Recommendation of Magistrate Judge Aspey (Doc. 90), wherein he determined whether Plaintiff was entitled to file a first amended complaint upon receiving from Plaintiff a motion for leave to conform his complaint to the evidence.¹ Having reviewed *de novo* the Report and Recommendation and no party having filed any objection to the Report and Recommendation,

IT IS HEREBY ORDERED that the Magistrate Judge's Report and Recommendation (Doc. 90) is **ACCEPTED** and **ADOPTED** by the Court.

IT IS FURTHER ORDERED that Plaintiff's Motion to Amend Complaint (Doc. 56)

¹ Before Magistrate Judge Aspey were Plaintiff's Motion for Leave to Conform his Complaint to the Evidence, (i.e. a motion for leave to file a first amended complaint) (Doc. 56) and Defendants' Motion to Dismiss the First Amended Complaint for the reason that it was not timely filed. (Doc. 64.)

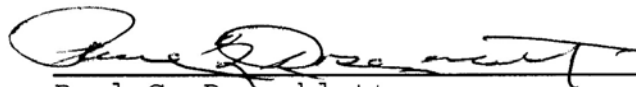
1 is **DENIED** without prejudice.

2 IT IS FURTHER ORDERED that Defendants' Motion to Dismiss (Doc. 64) is
3 **DENIED**.

4 IT IS FURTHER ORDERED that Plaintiff is permitted to file an amended complaint²
5 limited to correcting the original complaint only as to which Defendant acted improperly in
6 calibrating the pepper spray device used on Plaintiff and which Defendant actually fired the
7 pepper spray.

8 IT IS FURTHER ORDERED that Plaintiff is permitted to **correct** facts regarding the
9 identity of defendants, which were revealed during discovery; however, Plaintiff **may not**
10 **add facts**. Plaintiff shall file a proposed amended complaint containing the factual
11 allegations and legal causes of action with regard to **each** Defendant no later than **Friday,**
12 **November 21, 2008**.

13 DATED this 21st day of October, 2008.

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17 Paul G. Rosenblatt
United States District Judge
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24 ² Plaintiff is reminded that the amended complaint may not incorporate by reference
25 any part of the original complaint, and it supercedes the original complaint. Accordingly,
26 permitting Plaintiff to file an amended complaint will preclude Plaintiff from proceeding with
27 his claims against Defendants Arpaio and Preston, as his complaint does not state any basis
28 for liability or any factual claims regarding the aforementioned defendants, that is, absent
further pleading to again amend his complaint.